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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/588,060

08/01/2006

Eugeny Pecherer

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THE NATH LAW GROUP

112 South West Street

Alexandria, VA 22314

EXAMINER

NGUYEN, TINA MY PHUONG

ART UNIT

PAPER NUMBER

3739

MAIL DATE

DELIVERY MODE

08/18/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 10/588,060 | Applicant(s) PECHERER, EUGENY | |
| | Examiner TINA NGUYEN | Art Unit 3739 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>08/01/06, 07/10/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 7 and 16 are objected to because of the following informalities: "have having" in line 1 of each claim should be --have--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims **14-15** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The recitation of "for positioning toward the leading tip of an ISO 7376/1 type metal laryngoscope blade on mounting the light guide mount thereon" is unclear whether it is relating to the position of the electrical light or the function of the electrical light. For examining purposes, it is considered to be defining the position of the electrical light. However, appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

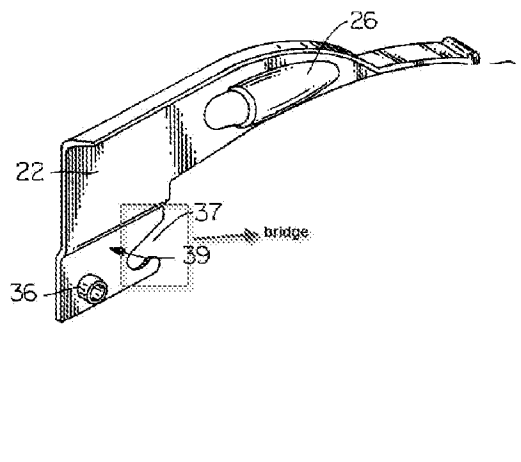
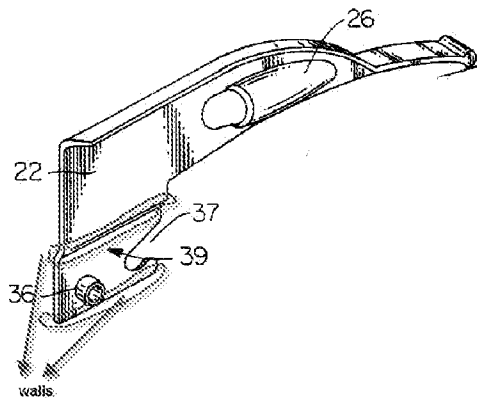
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims **1-3, 6, 9, 12, 17, and 20** are rejected under 35 U.S.C. 102(b) as being anticipated by Krauter et al. (U.S. Patent 6,013,026).

5. As to claim **1**, Krauter et al. disclose **a metal laryngoscope blade** (22, Fig. 3) **the metal laryngoscope blade having a leading tip and comprising (a) a resiliently**

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elastically deformable metal blade hook-on fitting including a thin walled U-shaped retaining member (39, Fig. 3, wherein it is considered to be elastically deformable because it is made of stainless steel, Col. 3, lines 33-35) facing toward the metal laryngoscope blade's leading tip, and including a pair of spaced apart substantially parallel side walls (See Figures below) with a resiliently elastically deformable bridge (See Figures below) extending widthwise between their leading lowermost regions for defining a cutout (37, Fig. 3), said side walls having trailing regions with respect to said bridge having exterior surfaces at least one thereof being provided with a non-frangible metal protrusion integrally formed therewith (36, Fig. 3) and (b) a metal spatula attached to said blade hook-on fitting for transversely extending from the laryngoscope handle in the laryngoscope blade's operative intubation position for insertion into a subject's mouth.



6.

7. The metal blade is capable of having a removable double snap engagement into an operative intubation position with a laryngoscope handle having the structure

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claimed. The cutout is capable of snap receiving a pivot rod of a handle. The metal protrusion is capable of being a snap insertion into a recess in a handle.

8. As to claim **2**, Krauter et al. disclose that there is a centrally disposed indentation (37, Fig. 3) directed away from its leading tip. This indentation is capable of precluding non snap insertion of a gauge having the same diameter of a pivot rod into the cutout.

9. As to claims **3, 9, and 17**, Krauter et al. disclose that there is a light guide mount (28, Fig. 3). This mount is capable of transferring in its operative intubation position illumination light from an electrical light source housed in a handle toward a subject's larynx entrance area. Furthermore, Krauter et al. disclose that this blade is ISO 7376/3 compatible (Col. 4, lines 3-7).

10. As to claims **6, 12, and 20**, Krauter et al. disclose a light guide mount (28, Fig. 3). This mount is capable of mounting onto a blade hook-on fitting of a metal laryngoscope blade as claimed in claims 2, 3, and 1 for providing illumination light for illuminating a subject's larynx entrance area in the operative intubation position of the metal laryngoscope blade on a laryngoscope handle.

Claim Rejections- 35 USC § 102/103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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12. Claim 8 and 13 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Krauter et al. (U.S. Patent 6,013,026).

13. As to claim 8, Krauter et al. do not disclose that the blade is constituted by a metal spatula welded onto a metal blade hook-on fitting. However, the claimed structure appears to be the same as the structure disclosed by Krauter et al. The limitation of "welded" defines the apparatus through a process which does not affect the end structure. The structure of the blade appears to be the same, whether the spatula is made separately from the metal fitting and welded on later or if it is made as a single piece with the metal fitting. Alternatively, if it happens that the structure is not the same, it would have been obvious to one of ordinary skill in the art to substitute one known method of forming metal structures (molded as one piece) for another known method of forming metal structures (welding together two separate pieces to form one piece) without acquiring unexpected results.

14. Claim 13 is rejected under the same rationale as claim 3.

Claim Rejections - 35 USC § 103

15. Claims 1-2, 7, 8, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable by Storz (U.S. Patent 5,529,570) in view of Krauter et al. (6,013,026).

16. As to claim 1, Storz discloses **a laryngoscope blade (Fig. 9) the metal laryngoscope blade having a leading tip and comprising (a) a resiliently elastically deformable metal blade hook-on fitting including a thin walled U-shaped retaining member (9, Fig. 8) facing toward the metal laryngoscope blade's**

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leading tip, and including a pair of spaced apart substantially parallel side walls

(Fig. 9) **with a resiliently elastically deformable bridge** (See Figure below)

extending widthwise between their leading lowermost regions for defining a

cutout (8, Fig. 8), said side walls having trailing regions with respect to said

bridge having exterior surfaces at least one thereof being provided with a non-

frangible metal protrusion integrally formed therewith (11, Fig. 9, Col. 3, lines 4-7)

and (b) a metal spatula (10, Fig. 9) attached to said blade hook-on fitting for

transversely extending from the laryngoscope handle in the laryngoscope blade's

operative intubation position for insertion into a subject's mouth.

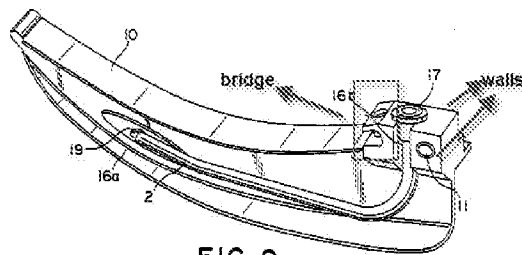


FIG. 9

17.

18. Storz is silent as to the material of the blade. Krauter et al. discloses a laryngoscope blade made of stainless steel (Col. 3, lines 33-36). It would have been obvious to one of ordinary skill in the art to make Storz's blade out of stainless steel in order to make Storz's blade stronger when using with the larynx of a subject.

19. The blade is capable of having a removable double snap engagement into an operative intubation position with a laryngoscope handle having the structure claimed.

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The cutout is capable of snap receiving a pivot rod of a handle. The metal protrusions are capable of being a snap insertion into a handle with recess.

20. As to claim **2**, Storz discloses that the bridge has a centrally disposed indentation (8, Fig. 8). This indentation is capable of precluding non snap insertion of a cylindrical gauge.

21. As to claims **7 and 16**, Storz discloses that the side walls have exterior surfaces each provided with a protrusion (Col. 3, lines 4-12). These protrusions are capable of snap insertion into a handle hook-on fitting's recess on positive snap manipulation of said blade hook-on fitting fully into the handle hook-on fitting whereupon the laryngoscope blade assumes its operative intubation position.

22. As to claim **8**, Storz does not disclose that the blade is constituted by a metal spatula welded onto a metal blade hook-on fitting. However, it would have been obvious to one of ordinary skill in the art to substitute one known method of forming metal structures (molded as one piece) for another known method of forming metal structures (welding together two separate pieces to form one piece) without acquiring unexpected results.

23. Claims 4, 10, 14, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Storz (U.S. Patent 5,529,570) in view of Krauter et al. (6,013,026) as applied to claims 1 (19), 2 (4), 3 (10), and 8 (14) above, in view of Phillips (U.S. Patent 3,856,001). Storz and Krauter et al. do not disclose that the light guide mount has an electrical light source disposed toward its leading tip which is connected to an electrical power source by an electrical connection. Storz instead teaches that the light guide

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mount transfers the light from a light source in the handle to its leading tip by optical fibers (Col. 2, lines 50-54). Phillips discloses a laryngoscope blade which contains a light bulb (22, Fig. 2) near the leading tip of the metal blade connected to a battery source in the handle (Col. 3, lines 39-44). It would have been obvious to one of ordinary skill in the art to substitute the lighting source arrangement disclosed by Phillips for the lighting arrangement disclosed by Storz to make the manufacturing of the laryngoscope less complex (because, as known in the art, fiber optic connections are more complex than electrical or regular cable connections).

24. Although Storz and Upsher do not disclose that the laryngoscope is ISO 7376/1 compatible, it would have been obvious to one of ordinary skill in the art to make the dimensions of the fitting so they were compatible.

25. Claims 5, 11, 15, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Storz (U.S. Patent 5,529,570) in view of Krauter et al. (6,013,026) as applied to claims 1 (19), 2 (5), 3 (11), and 8 (15) above, further in view of Upsher (U.S. Patent 4,527,553). Storz and Krauter et al. do not disclose that the light guide mount comprises an electrical light source disposed toward its trailing end. However, Upsher discloses a laryngoscope blade with a light source (44, Fig. 1) positioned in its trailing end. The lighting means disclosed by Upsher is therefore an art- recognized equivalent. It would have been obvious to one of ordinary skill in the art to substitute the lighting means disclosed by Upsher for the fiber optic means disclosed by Storz and still arrive at the same predictable laryngoscope. It follows that the modified apparatus would be able to provide light for illuminating a subject's larynx.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TINA NGUYEN whose telephone number is (571)270-1489. The examiner can normally be reached on M-Thurs 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Linda C Dvorak/
Supervisory Patent Examiner, Art
Unit 3739

/T. N./
Examiner, Art Unit 3739
8/11/2009